

DRAFT
MEMORANDUM OF AGREEMENT
FOR THE PROPOSED SUSSEX EAST WEST CORRIDOR
SUSSEX COUNTY, DELAWARE
88-112-01
OCTOBER, 1991

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FOR THE PROPOSED SUSSEX EAST WEST CORRIDOR

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WHEREAS, the Federal Highway Administration, U.S. Department of Transportation (FHWA), in consultation with the Delaware State Historic Preservation Officer (SHPO), has determined that the construction of the proposed Sussex East West Corridor may have an adverse effect upon properties, structures and historic and prehistoric archaeological sites included in or eligible for inclusion in the National Register of Historic Places and will continue to request the comments of the Advisory Council on Historic Preservation (ACHP) pursuant to Section 106 (and Section 110f) of the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations, "Protection of Historic and Cultural Properties (36 CFR Part 800)"

WHEREAS, pursuant to the procedures of the ACHP (36 CFR Part 800), representatives of the Delaware Department of Transportation (DelDOT), an invited participant in the consultation process, the FHWA and the DelSHPO will consult and review the undertaking to consider prudent and feasible alternatives to avoid or satisfactorily mitigate the adverse effect; and,

WHEREAS, pursuant to the procedures of the ACHP (36 CFR Part 800), representatives of the FHWA, the DelDOT, and the DelSHPO have and will continue to consult;

NOW THEREFORE, the FHWA, DelDOT, DelSHPO and ACHP agree that the planning for all cultural resources within the proposed Sussex East West corridor and all related construction activities, i.e., borrow pits, wetland replacement sites, construction roads, staging and storage areas, etc., will be accomplished in accordance with the following procedures in order to take into account the effect of the proposed project on cultural resources.

1.0 Identification of Resources

DelDOT, in consultation with the DelSHPO is undertaking and will complete a Phase I and II archaeological, historical and architectural survey of the proposed Sussex East West corridor and all related construction activities, i.e., borrow pits, wetland replacement sites, construction roads, staging and storage areas. This survey has and will continue to be performed in accordance with Appendix B of 36 CFR Part 66 ("Guidelines for the Location and Identification of Historic Properties Containing Scientific, Prehistoric, Historical, or Archaeological Data") and has and will continue to result in the location and identification of all properties within the proposed Sussex East West corridor which are or appear to be eligible for listing in the National Register of Historic Places under Criteria A, B, C, and/or D.

2.0 Evaluation of Significance

DelDOT, in consultation with the DelSHPO and FHWA, will apply the National Register Criteria (36 CFR 60.6) to all sites and properties which have been and will be identified in the final Sussex East West corridor and all related construction activities, i.e., borrow pits, wetland replacement sites, construction roads, staging and storage areas. The FHWA will submit the results of these consultations to the Keeper of the National Register in the form of Determinations of Eligibility pursuant to 36 CFR 63.3 for those properties that will be affected by the proposed project.

3.0 Determination of Effect

DelDOT will, in consultation with the FHWA and DelSHPO, determine the effect of the proposed undertaking for each National Register listed or eligible property or site identified in Section 2.0 above in accordance with ACHP procedures (36 CFR 800.3).

4.0 Mitigation Measures

Cultural properties, sites and structures, that are determined eligible under Section 2.0 above and which may be adversely affected by the proposed project as identified in Section 3.0 above will be treated in accordance with the following stipulations in order to minimize any identified adverse effect.

4.1 General Measures

During the development of all stages of route selection and design, a reasonable effort will be made to locate the proposed new

alignment and structures away from affected sites, structures and properties so as to avoid adverse effects. Agreement on final alignment selection will be subject to DelSHPO and ACHP review and comments.

4.2 Archaeological Resources

If efforts to avoid significant archaeological sites or properties during the final planning and design of the proposed project are not prudent or feasible, preservation in place is not feasible, and the effect on these resources remains adverse, DelDOT will develop, in consultation with the DelSHPO and FHWA, data recovery plans for each site or class of sites so affected. All data recovery plans will include research design, budgets and schedules for completion prior to construction and will be otherwise in conformance with the ACHP "HANDBOOK" and subject to FHWA approval and ACHP and DelSHPO review and comment.

4.3 Historical/Architectural Resources

If efforts to avoid direct or indirect adverse effects on significant historical/architectural structures or properties during the final planning and design of the proposed project are not prudent or feasible, DelDOT and FHWA shall develop mitigation plans for each district, site or property so affected. These plans will be subject to DelSHPO and ACHP review and comment. These plans may include, but not be limited to any combination of the following measures as appropriate:

- 4.3.1 Moving the structure(s) and marketing for resale.

4.3.2 Recordation of the structure(s) in accordance with the standards of the Historic American Building Survey or the Historic American Engineering Record.

4.3.3 Landscaping to provide visual screens and/or noise barriers.

4.4 Completion of Mitigation

DelDOT and FHWA will ensure that all mitigation measures are completed and reports or other documentation agreed to by DelSHPO and ACHP prior to the demolition, alteration, substantial deterioration and/or transfer of the affected site or property.

5.0 Reporting Standards

Draft and Final Survey reports and reports or other documentation that may result from any projects to mitigate adverse effects of the proposed undertaking will be prepared in accordance with the professional standards outlined in the ACHP "Guidelines for the Preparation and Evaluation of Archaeological Reports" and the DelSHPO's "Guidelines for Cultural Resource Reports Submitted to the Bureau of Archaeology and Historic Preservation." Any recordation of buildings or structures will be accomplished in conformance with HABS and HAER standards. These reports and documents will be subject to the review and approval of the DelSHPO and will be submitted as final prior to the completion of construction. Copies of the final reports will be distributed to all MOA signatories and all other interested parties to be determined by DelDOT, FHWA, and DelSHPO. A Public Summary Report

detailing the prehistory, history and architectural resources of the Sussex East West corridor will be prepared and made available for general distribution prior to the completion of construction.

6.0 Professional Qualifications

DelDOT and FHWA shall ensure that all historic architectural, and archaeological work pursuant to this Memorandum of Agreement is carried out by or under the direct supervision of a person or persons meeting at a minimum, the appropriate qualifications set forth in the Department of the Interiors "Professional Qualifications."

7.0 Public Participation

As it can be accomplished, every effort will be made to provide for public participation in the cultural resource survey's and data recovery projects, if any, during the planning and construction phases of the Sussex East West project.

8.0 Dispute Resolution

If at any time during the execution of the terms of this Memorandum of Agreement, a conflict or objection arises that cannot be resolved by the FHWA, DelDOT and DelSHPO, the conflict or objection may be brought to the ACHP for review and comment. FHWA

will take into account the comments of ACHP in reaching a final decision.

FHWA, Delaware Division Administrator Date

DelDOT, Chief Engineer/Director Date

DelSHPO, State Historic Preservation Officer Date

ACHP, Executive Director Date

ACHP, Chairman Date